IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O. O. C. J.

SUIT NO.1724 OF 1978

The Century Spinning and Manufacturing Co.Ltd. ...Plaintiff.
Vs.
Oriental Fire and General Insurance Co. & Ors. ...Defendants.
....
Mr. M. L. Bansal for the Plaintiff.
Mr.E. P. Bharucha, Senior Advocate with Mr. C.E. Bharucha and Ms. Brotin Das i/b. Gagrats for the Defendants.
.....

CORAM : DR.D.Y.CHANDRACHUD, J.
May 4, 2007.

JUDGMENT :

The Plaintiff which is a Public Limited Company, registered under the Companies' Act, 1913, owns and runs three Divisions known as (i) Century Rayon Division, (ii) Century Rayon Tyrecord Division and (iii) Century Chemicals. All the three Divisions are situated at Murbad Road, Kalyan. The Defendants are companies which carry on General Insurance business. Between the period 1st January 1976 and 1st January 1977, the Plaintiff obtained five Insurance Policies from the Defendants, namely:

a) Policy No.1110/0/0/Various/F/92 (inter alia covering the building, machinery and accessories of the Rayon division);

b) Policy No.1110/0/Various/F/94 (inter alia covering the stock and stock-in-process of the Rayon division;

c) Policy No.1110/0/Various/F/95 (inter alia covering the building, machinery and accessories of the Tyrecord division;

d) Policy No.1110/0/Various/F/97 (inter alia covering the stock and stock-in-process of the Tyrecord division;

e) Policy No.1110/0/0/F/101 (inter alia giving consequential loss insurance cover to the Plaintiff in respect of all its aforesaid two divisions).

The first four policies are described collectively as policies of Fire Insurance, but they have been extended to cover a risk of loss and damage caused by riot and strike and malicious damage. The fifth policy is a policy to cover consequential loss.

2. The claim of the Plaintiff is that on the night of 24th July 1976, an agitation took place by the workmen within the premises of the factory at Kalyan. The agitating workers are alleged to have gathered in a mob and to have attempted to reach the residence of the Senior Vice President of the Plaintiff. The Plaintiff avers that there was an apprehension in the mind of the management that the riot would spread, leading to wide-spread damage. The management of the Plaintiff declared a lockout from 2 a.m. on 26th

July 1976 in the Rayon and Tyrecord Divisions. The notice stipulated that Departments concerned with essential services such as the Power House, Pump House and Water Treatment would continue to work as usual. Moreover, in order to salvage work in progress and finished goods, the Viscose, Spinbath, Spinning and After treatment departments were to be partially operated. The case of the Plaintiff is that despite the notice of lockout, the workmen remained within the factory. The workers were alleged to have stopped work in protest against the lockout until they left the premises with the assistance of Police. The factory remained under lockout till 30th July 1976 when the lockout was lifted on the intervention of the Minister for Labour of the Government of Maharashtra.

3. The case of the Plaintiff is that as a result of the refusal of the workers to work, the agitation of the workers in the factory premises and the consequent lockout, various processes could not be attended to. As a result, the viscose in the Rayon and Tyrecord Divisions, in the tanks and pipelines, machines and accessories coagulated and solidified. The coagulation of Viscose and dismantling and cleaning of the machinery is alleged to have

resulted in damage to the Plaintiff.

4. The Surveyor of the Defendants, Mehta and Padamsey Pvt. Ltd. submitted a survey report on 12th January 1977 and 5th December 1977 quantifying the losses suffered by the Plaintiff.

5. The defence to the claim of the Plaintiff is that the loss falls within an excepted peril and is hence not covered by the five policies of Insurance. The Defendants' plea is that the loss which the Plaintiff claims to have sustained arose due to a stoppage or cessation of work which is expressly excluded from the purview of the five Insurance Policies.

6. The following issues arise in the suit:

1. Do the Plaintiffs prove that they have any cause of action and is the suit maintainable against the Defendants?

2. Are the Plaintiffs entitled to claim for loss or damage under insurance policies which are in favour of Century Rayon (Rayon Division), Century Rayon (Tyrecord Division) and Century Chemicals?

3. Do the Plaintiffs prove that the alleged acts and omissions were done by the workers maliciously and in furtherance of a common intention to cause damage or loss to the Plaintiffs?

4. Do the Plaintiffs prove that there is a malicious damage or loss of Rs.58,40,773/- or another sum within the meaning of the said policies so as to entitle the Plaintiffs to the payment of the said amount?

5. Do the Plaintiffs prove the alleged loss or damage of Rs.58,40,773/- or of Rs.13,03,140/- and that it was directly caused by the malicious acts of diverse persons in the case of the first four policies viz., the Material Damage Policies?

6. Do the Plaintiffs prove that the alleged loss of Rs.58,40,773/- or Rs.45,37,633/- was caused by the malicious acts of diverse persons in the case of the fifth policy i.e. Consequential Loss Policy?

7. Do the Plaintiffs prove that the alleged loss of Rs.58,40,773/- or Rs.13,03,140/- was a loss to the property insured and was directly caused by any acts or commissions alleged?

8. Do the Plaintiffs prove that the alleged loss of Rs.10,45,620/- was consequent to interruption/ interference with the insurers business (referred to in the fifth policy) and is covered by Spoilage Risk Clause in the said policy?

9. Do the Plaintiffs prove that Rs.58,40,773/- is a debt which became due and payable under the polices on or from 30th January 1976 or from 13th August, 1976 or any other date?

10. Do the Plaintiffs prove that this Court has jurisdiction to try this suit?

11. What decree?

12. What order?

7. Each of the issues can now be taken up:

ISSUE NO.10 : Jurisdiction :

8. The Defendants undisputedly carry on business at Mumbai. All the Insurance Policies which are the subject matter of the suit were issued by the Defendants at Mumbai. The claim under the Insurance Policies was to be settled and paid in Mumbai. This Court, therefore, has jurisdiction to entertain and try the suit.

ISSUE No.2:

9. The defence is that the Insurance Policies were not in the name of the Plaintiff, but its respective three Divisions and that consequently the suit was not maintainable. There is no merit in that defence. The three Divisions are administrative units of the Plaintiff and belong to the Plaintiff. The insurance premium was paid by the Plaintiff. The ground that the Insurance Policies were taken in the name of administrative Divisions would, therefore, not be of any relevance.

ISSUES 1, 3, 4, 5, 6 and 7:

10. The first four Insurance Policies contain a riot and strike endorsement which is attached to and forms a part of the policy.

The Special Conditions governing the riot and strike endorsement of the aforesaid policies are identical. The question of construction which arises in the present case revolves around Special Conditions 5(i)(a) and 5(i)(b) which are as follows:

> "Special Condition 5(i)(a) : "Condition 5: (i) This insurance does not cover:- (a) loss of earnings, loss by delay, loss of market or other consequential or indirect loss or damage of any kind or description whatsoever."
>
> Special Condition 5(i)(b): "Condition 5: (i) This insurance does not cover:- (b) loss or damage resulting from total or partial cessation of work or the retarding or interruption or cessation of any process or operation." (emphasis supplied).

The first four Insurance Policies also contain a 'Malicious Damage Risks' Clause which is attached to and forms part of each of those policies. The 'Malicious Damage Risks' Clause is to the following effect :

> "Malicious Damage Risks' Clause: In consideration of the payment of the sum of Rs..... additional Premium, it is hereby agreed and declared that the insurance under the said RIOT AND STRIKE ENDORSEMENT shall extend to include "MALICIOUS DAMAGE" which for the purpose of this extension shall mean,
>
> "Loss of or damage to the property insured directly caused by the malicious Act of any person (whether or not such act is committed in the course of a disturbance of the Public peace) not being an act amounting to or committed in connection with an occurrence mentioned

> in Special Condition No.6 of the said Riot and Strike Endorsement.'
>
> 'Loss of or damage to the property insured directly caused by the malicious Act of any person (whether or not such act is committed in the course of a disturbance of the Public peace) not being an act amounting to or committed in connection with an occurrence mentioned in Special Condition No.6 of the said Riot and Strike Endorsement.'
>
> But the Company shall not be liable under this Extension for any loss or damage by fire or explosion nor for any loss or damage arising out of or in the course of burglary, house-breaking, theft or larceny or any attempt thereat or caused by any person taking part therein.
>
> PROVIDED ALWAYS that all the Conditions and Provisions of the said RIOT AND STRIKE ENDORSEMENT shall apply to this extension as if they had been incorporated herein." (emphasis supplied).

Hence, the coverage of risk due to Malicious Damage is also subject to Special Condition 5(i) noted above. The riot and strike endorsement excludes loss or damage resulting from a total or partial cessation of work or from retarding, interruption or cessation of any process or operation. The Malicious Damage Risks clause similarly does not cover a loss due to the aforesaid events.

11. The fifth Insurance Policy is a consequential loss policy and covers loss or damage occasioned due to fire or lightening

subject to the condition that “at the time of the happening of the Damage there shall be in force an insurance covering the interest of the insured in the property at the premises against such Damage and that payment shall have been made or liability admitted therefor under such insurance”. The fifth policy also contains a riot and strike endorsement. Condition 5(i)(a) is to the following effect:

> “Special Condition 5(i)(a): “Condition 5:(i) this insurance does not cover:- (a) loss resulting from total or partial cessation of work or the retarding or interruption or cessation of any process or operation other than that arising directly from destruction of or damage to the Premises or the property therein of the insured caused by the perils insured against under this policy.”

The fifth Policy similarly contains a Malicious Damage Risks Clause to the following effect :

> “Malicious Damage Risks Clause : In consideration of the payment of the aforementioned additional premium, it is hereby agreed and declared that the term damage as defined under the Riot and Strike Endorsement of this policy shall extend to include MALICIOUS DAMAGE which for the purpose of this extension shall mean:-
>
> Destruction or damage directly caused by the malicious act of any person (whether or not such act is committed in the course of a disturbance of the public peace) not being an act amounting to or committed in connection with an occurrence mentioned in Special Conditions 6 of the Riot and Strike Endorsement of this policy.

> But the Company shall not be liable under this extension for loss resulting from fire or explosion nor for any loss arising from or in the course of burglary, house-breaking, theft or larceny or any attempt thereat or caused by any person taking part therein. **Provided always that all the conditions and provisions of the Riot and Strike endorsement of this Policy shall apply to this extension as if they had been incorporation herein.**"

Consequently, loss or damage resulting from a total or partial cessation of work or the retarding, interruption or cessation of any process or operation are excluded from the consequential loss policy as well.

12. The fifth policy also contains a 'Spoilage Risk' Clause which insures the stock of pulp, caustic and CS2 in the various departments and processes being carried out by the Plaintiffs against any spoilage arising or "consequent to interruption or interference with the insured's business at the within referred premises as a result of damage to or destruction of the said premises or property therein due to the perils insured by the material damage policies on the said property and premises". In other words, under the 'Spoilage Risk' clause, the specific event which is insured against is damage or destruction of the premises

or property of the Plaintiffs due to the perils insured by the material damage policies on the property and premises.

13. The submission of the Plaintiff is that the loss or damage that is alleged to have been sustained was occasioned by an insured peril. The Defendants submit that the suit must fail because the alleged damage has not been caused by an insured peril but by a risk which was excepted from the Policies of Insurance. In assessing the submissions, it would at the outset be necessary to have regard to the evidence that was adduced at the trial. The first witness who deposed on behalf of the Plaintiff was S.M. Bandekar, a Vice President at the Rayon Plant on the date of the deposition. P.W. 1 deposed to the circumstances in which the Plaintiff declared a lockout with effect from 2 a.m. on 26th July 1976. According to the witness, on 24th July 1976, the workmen at the Plaintiff's premises resorted to shouting threatening slogans and the Plaintiff apprehended that untoward incidents endangering property and life might take place. The Plaintiff declared a lockout from 2 a.m. on 26th July 1976 until 7 a.m. on 30th July 1976. According to the witness, damage was caused to the Plaintiff as the workers did not bleed the viscose from the spinning machines,

causing the viscose to solidify within the machines and damage the machinery. According to the witness, the workers prevented workers of the Power house department and the Engine room department. The workers were alleged to have prevented a planned shut down of the plant. Therefore, according to the witness, damage was caused to the Plant and Machinery, equipment, accessories, stock, stock in progress as well as loss of production and profits and other consequential losses.

14. There is merit in the submission which has been urged on behalf of the Defendant that the answers elicited during the cross-examination of the witness, demonstrate that (i) The workmen had not resorted to any overt act of violence; (ii) The workers had not directly damaged or destroyed any machinery; (iii) The damage which resulted to the equipment and machinery was due to workers not carrying out instructions; (iv) The witness had no personal knowledge of all the incidents of alleged damage committed by the workers; (v) The witness had not prepared his own affidavit, nor had he furnished any instructions in respect of the same.

15. The next witness who deposed on behalf of the management was Shri P.M. Singrodia, P. W.2. The witness deposed that on 24th April 1976, the workmen shouted threatening slogans and attempted to reach the residence of the Senior Vice President incharge of Finance and Administration of the Plaintiff. On 25th July 1976, the workers were alleged to have left their places of work, to have created disorder and riot and left the machines running. The workers were alleged to have wrongly caused the closure of various plants and processes resulting in damage and loss. Apprehending that untoward incidents might occur endangering the property of the Plaintiff and the workers having failed to do their work, the Plaintiff declared a lockout from 2 a.m. from 26th July 1976. According to the witness, damage has been caused to the Plaintiff as the workers did not bleed the viscose from the spinning machines causing the same to solidify within the machines and spoil the machinery. The workers were also alleged to have prevented operation of the power house department, engine room department and sanitation department. By preventing a planned shut down, the workers were alleged to have caused damage to the plant and machinery, equipment, accessories, stock, stock in progress as well as loss of production

and profits.

16. On behalf of the defendants, the following aspects of the cross-examination of PW 2 have been highlighted in the written submissions filed before the Court (each of the following statements being referable to a specific part of the deposition) :

(i) PW 2 had no personal knowledge of the events and occurrences of 24th July 1976. All statements were based on hearsay;

-(ii) PW 2 was not personally present when the workers threatened to go to the Senior Vice President's house;

-(iii) PW 2 saw no broken or damaged machinery when he visited the rayon plant of the Plaintiffs on 25th July 1976;

-(iv) There was no breakage in the refrigeration plant which was personally inspected by him;

-(v) PW 2 did not have any first hand knowledge of any damage to the Plaintiff's various plants;

-(vi) The apprehension in the minds of the management as referred to by PW 2 in paragraph 14 of the affidavit of evidence was not based on personal knowledge but based on the reports obtained from the security department of the Plaintiffs;

-(vii) The written instructions about the manner in which the workers should treat the machines after stopping work and in alleged defiance of which the workmen acted were not on record in the present proceedings;

-(viii) Paragraphs 5 and 6 of PW 2's affidavit of evidence expressing an opinion on the interpretation of the insurance policies were not based on personal knowledge and was merely an inference drawn by him;

-(ix) The statement made by PW 2 in paragraphs 15, 17 and 18 of his Affidavit of Evidence that the workers were acting in combination and purposely did not bleed the viscose from the machines was merely his own inference and nothing else;

-(x) The witness was not present at many of the incidents described in the affidavit and the same were the result of the witness' conjecture or inference based on information others had given to him;

-(xi) The statements regarding efforts made by the Plaintiff to allegedly minimise the loss and the further statements about yarn production being of inferior quality were not to the personal knowledge of PW 2 and were based on reports.

17. The defence examined Shri Virendra Shah, D.W. 1 who was a representative of the Surveyor. The deposition of D.W. 1 was to the effect that the workers had not indulged in any active damage to any part of the factory building, plant or machinery and that the loss or damage in the Rayon and Tyrecord Division was due to the coagulation of viscose in the pipelines. No broken machinery was seen in any of the three Plants of the Plaintiff. The viscose had coagulated and damage to the tanks and pipelines in

the Rayon and Tyrecord plant was caused because it remained unattended. No damage, according to the witness, had been caused to the machinery as a result of any direct malicious act of the workmen and there was minor damage in some departments due to stoppage of work.

18. The evidence on the record shows that the loss or damage that was sustained by the Plaintiff was occasioned by a cessation of work or, by a retardation, interruption or cessation of the process or operation. The evidentiary material on the record does not reveal any overt act on the part of the workmen which resulted in damage to the machinery. The damage as it emerges from the evidence of the the Plaintiff's witness, was caused by the workmen refusing to work which led to the solidification of the viscose. The damage was similarly caused as a result of the workmen having refused to work and not following instructions for planned shut down of the machinery. The perils of loss or damage resulting from a total or partial cessation of work or retarding, interruption or cessation of any process or operation are excepted perils. A loss caused by the cessation of work is expressly excluded from the insured perils in the first four policies as well as

in the policy providing for consequential loss. The answers elicited from P.W. 2 during the course of cross-examination (reference may be made in this connection to Questions 39 to 52 at page 459 of the compilation) amply demonstrate that there was no direct or overt act of any worker resulting in damage to machinery. In the circumstances, the damage suffered by the Plaintiff has been caused by excluded perils consequent upon which the Plaintiff is not entitled to recover.

ISSUE NO.8 :

19. The Spoilage Risk Clause postulates: (i) Interruption or interference with the business of the insured; (ii) The interruption or interference must arise as a result of damage to or a destruction of the premises or property of the insured; and (iii) The damage or destruction must be caused by the perils insured under the material damage policies. In the present case, the damage caused to the Plaintiff has not been caused by perils insured under the first four policies of insurance. The Spoilage Risk Clause of the Consequential Loss Policy would, therefore, not cover the claim raised by the Plaintiff.

20. In view of the finding that has been arrived at to the effect that the loss and damage in the present case was not occasioned by an insured peril, the claim in the suit must fail.

21. For the aforesaid reasons, the suit shall have to be dismissed. The suit shall accordingly stand dismissed. The Plaintiff would be liable to pay the costs of the Defendants.

.....